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CLERK OF COURT
J. S. BURKE
IDAHO

Attorneys for Trustee

UNITED STATES BANKRUPTCY COURT
DISTRICT OF IDAHO

In Re:

Paul Rees Harward and
Janet Louise Harward,

Debtors.

Case No. 97-02754

**NOTICE OF HEARING
AND MOTION FOR
APPROVAL OF
COMPROMISE RE: K & L**

NOTICE OF HEARING

PLEASE TAKE NOTICE That the undersigned will bring the above Motion for Approval of Compromise Re: K & L on for hearing before this Court at 550 W. Fort Street, 5th Floor, Boise, Idaho, on the **5th day of March, 1999, at the hour of 9 a.m.**, or as soon thereafter as counsel can be heard.

MOTION TO APPROVE COMPROMISE RE: K & L

Pursuant to Bankruptcy Rule 9019, the Trustee, John H. Krommenhoek, moves the court for approval of a compromise between the Estate and K & L Development, LLC, ("K & L"). The proposed compromise allows the Estate to retain \$4,600.00 from disputed collateral, free and clear of any interest of K & L. K&L will be distributed \$2,000.00 from the disputed collateral which totals \$6,600. In support of this motion, the Trustee alleges as follows:

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1. The Debtors were a contractor building single-family homes and filed a Chapter 7 bankruptcy on September 9, 1997.

2. Prior to bankruptcy, on August 29, 1996, the Debtors granted and Defendant recorded, a Deed of Trust securing an obligation of \$12,454,000 on a single-family home at 7606 Birch Lane, Nampa, Idaho ("Birch Lane Property"). Thereafter, K & L used and occupied the Birch Lane Property as a developer/realtor office in the subdivision from September, 1996 to September, 1997. The monthly payments on the underlying loan, when made, were paid by the Debtors not by K&L.

3. The Trustee's position, based upon the Debtors' purported testimony, is that K & L agreed to pay rent by making the underlying payments on the Birch Lane Property. K & L's position is that it had no obligation or agreement to pay rent through payments on the underlying deed of trust obligation, but that the Debtors benefitted from its marketing activities by having it occupy the Birch Lane Property. K&L also contended that \$20,000 in advances identified in the next paragraph, would be secured through a future advance clause in the Birch Lane Deed of Trust. K & L further argued that subsequent to the bankruptcy petition, it advanced more funds to cure the Debtors' construction defaults to third parties, which K & L and the Debtors marketed jointly.

4. On August 27, 1997, the Debtors granted, and the Defendant K & L recorded, two other Deeds of Trust on the Birch Lane Property and property at 2306 Stonehedge, Nampa, Idaho, securing \$10,000.00 on each property. The funds were advanced on July 15, 1997. Trustee claims that these two Deeds of Trust were preferences. K & L conceded that these Deeds of Trusts were preferential but contended that the advances were nevertheless secured by the Birch Lane Deed of Trust.

5. On October 22, 1997, the Trustee filed the Complaint in the adversary, *Krommenhoek v. K & L Development, LLC*, Adversary No. 97-6334, to avoid and/or obtain an order of satisfaction, of the Deeds of Trust held by K & L on the Debtors' properties. Through a Memorandum of Decision filed July 28, 1998 in the adversary by Judge Alfred Hagan, the Court ruled on cross-motions for summary judgment. The court resolved all issues in favor of the Trustee with the exception that issues of fact remained for trial as to the purported rental arrangement and satisfaction of the Deed of Trust held by K & L on the Birch Lane Property.

6. In the meantime, on February 19, 1998, the Birch Lane Property was sold by the Trustee, without objection from K & L, with K & L's interests, if any, to attach to the proceeds of \$6,600.00 remaining after payment of the first position deed of trust to the bank.

7. The Trustee and K & L have agreed to settle the dispute, subject to court approval, whereby the Trustee shall retain \$4,600.00 of the collateral, free and clear of any interest of K & L, and K & L shall receive a distribution of \$2,000.00 and release its claim of security interest in the proceeds. The Trustee believes that the proposed compromise is in the best interests of the creditors and the Estate. The compromise will eliminate the risk of loss to the Trustee and preserve assets which would otherwise be spent in litigation costs. the Trustee recommends that the court approve the proposed compromise.

Dated this 11 day of February, 1999.

EVANS, KEANE LLP

By Jed W. Manwaring
Jed W. Manwaring, Of the Firm
Attorneys for Trustee

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11 day of February, 1999, a true and correct copy of the foregoing document was served by first-class mail, postage prepaid, and addressed to; by fax transmission to; by overnight delivery to; or by personally delivering to or leaving with a person in charge of the office as indicated below:

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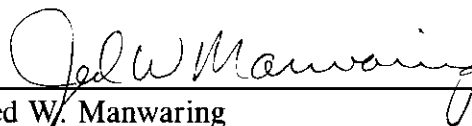
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